

Marlene Dortch

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of

RM No. 11391

E-mail Address Portability

**FILED/ACCEPTED**

**NOV 2 02007**

Federal Communications Commission  
Office of the Secretary

**RESPONSE TO OPPOSITION OF TIME WARNER INC.**

Gail M. Mortenson  
4300 Lowell St., N.W.  
Washington, DC 20016

November 20, 2007

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**DISCUSSION**

**I. E-MAIL ACCOUNT PORTABILITY IS NEEDED TO PROTECT CONSUMERS  
FROM ADVERSE EFFECTS RESULTING FROM ABRUPT TERMINATION OF E-MAIL  
ACCOUNTS**

In response to my petition proposing e-mail account portability, Time Warner terms my proposal "a solution looking for a problem". The reason they arrived at this conclusion is that they failed to grasp—or at least failed to acknowledge—*what* the problem is. The problem is that consumers who use the e-mail services provided by ISPs and others are totally at the mercy of these providers. Consumers have no rights whatsoever to what they erroneously believe are "their" e-mail accounts. These accounts can be abruptly terminated at any time for any reason (or for no reason at all), resulting in predictable, and often unpredictable, adverse consequences for their former users.

Despite the fact that I had been a paying AOL customer for many years, AOL shut down my e-mail account in the middle of a billing cycle virtually overnight. The phone call that led to this termination occurred on a busy weekend preceding the holidays last December. After getting as far as I could with AOL customer service that night, I decided I'd call back on Monday and straighten the matter out. Imagine my shock—horror actually—when I went to access my account on Monday and discovered that it had already been shut down, and all of my e-mail folders associated with it were lost forever.

I do not understand what legal authority AOL had to dump my files—stored on space that I in essence rented from them—in so peremptory a manner. To my mind, they had no more right to do so than a company renting me space to store my physical possessions

would have to decide on a whim that they no longer wanted me as a customer, and then proceed to throw my property out.

Reading AOL/Time Warner's rebuttal to my petition, I was struck by the fact that the attorneys who crafted it had no knowledge, other than the FCC petition itself, of the facts involved in my dispute with AOL. Given the many phone calls I made and letters I sent to both AOL and Time Warner, I find this astonishing and more than a little disheartening. (Even worse, the information that the attorneys purport to have about my "prior communications" with AOL is completely false.) Did anyone at AOL other than the customer service rep with whom I spoke on several occasions actually read my letters or even know of my grievances?

I sent my first letter to Kimberly Partoll, vice president and head of paid customer services. This letter generated an AOL response that appeared to be nothing more than a form letter, and so I sent a second letter to Ira Parker, AOL general counsel. I also sent copies to Randy Falco, AOL CEO; Richard Parsons, Time Warner CEO; and Paul Cappuccio, Time Warner general counsel.

Despite this considerable effort on my part, no one at either AOL or Time Warner (customer "service" excepted) was interested in what I had to say. Yet, when I filed my petition with the FCC suggesting that perhaps it was time for some regulation in the e-mail arena, Time Warner mounted a vigorous, and undoubtedly costly, legal defense of the status quo. I wonder, what chance does the individual consumer have of being heard when pitted against a huge corporate entity like AOL/Time Warner who simply refuses to listen? My own experience leads me to conclude that the consumer has very little chance indeed, and I believe that this is why some form of regulation is called for.

## **II. THE FACTUAL PREDICATE DESCRIBED IN THE PETITION MAKES CLEAR WHY THERE IS A NEED TO PROTECT CONSUMERS FROM ABRUPT TERMINATION OF E-MAIL ACCOUNTS**

If the lawyers who wrote the response to my petition had been aware of the facts surrounding AOL's abrupt termination of my account, they would know that until the night AOL announced its intention to close it, I had no idea my son was listed as the owner. Rather than repeat all the details anew, however, I will insert here the letter I sent to Kimberly Partoll in February of 2007. Perhaps now it will actually be read by those at AOL for whom it was intended.

AOL Corporate Headquarters  
22000 AOL Way  
Dulles, VA 20166

Attn: Kimberley Partoll, Executive Vice President  
Customer Management and Paid Services

Dear Ms Partoll:

Several weeks ago I spoke with someone at AOL corporate headquarters (I believe her name was Marlana Davis) regarding the abrupt termination of my AOL email account. I am now unable to find her in the ACS corporate directory so I am addressing this letter to you since it seems to be in your bailiwick.

To recap briefly: I had called AOL customer service in mid-December to request that the \$9.95 monthly service charge be removed from my monthly Discover Card statement, given that AOL had instituted a policy of not charging for email some months earlier. During the course of my conversation with customer service, I was told that my son was listed as the account owner. How this came about I don't really know. We had had the account since he received a Dell PC for an eighth-grade graduation present years earlier. My thought is that he simply installed the AOL trial software that came with the computer and that is how his name came to be on the account. However, regardless of how it came to be that he was listed, I am the one who paid the bill over the intervening years and when questions or issues arose with the account, I called AOL and had them

### U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.  
Article Sent To: (to be completed by mailer)  
Kimberley Partoll, Customer Management  
AOL Corporate Headquarters, 22000 AOL Way  
Dulles, VA 20166  
DELIVERY CONFIRMATION NUMBER: 9999 1922 5261 6663  
0304 3490 0002 0446 4000  
FEB 21 2007  
WASHINGTON SQUARE PO 20166-0997  
USPS  
PS Form 152, May 2002  
POSTAL CUSTOMER:  
Keep this receipt. For inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)  
or call 1-800-222-1811  
CHECK ONE (POSTAL USE ONLY)  
☒ Priority Mail™ Service  
☐ First-Class Mail® parcel  
☐ Package Services parcel  
(See Reverse)

resolved. Never previously had the issue of my son's name on the account been alluded to or posed a problem.

I was, to put it mildly, extremely distraught when AOL shut down this account, an account I had paid for for so many years, practically overnight. I am a self-employed editor and I used this email account for my business. It was also the account that my daughter used (under her own screen name), and it was this email address that she had supplied as contact information to the nine colleges she applied to for admission next fall.

At the time I spoke with Ms Davis, my daughter and I had set up new email accounts elsewhere, and although I was still extremely upset about the entire episode and the way AOL handled it, I had decided simply to write it off as a very bad consumer experience (in fact, I would have to say the worst in my life given the havoc it has wrought). However, in the intervening weeks it has become increasingly apparent that AOL's actions in abruptly terminating my account have been not just inconvenient but economically damaging to me and my family.

The first such event to come to light was when I received an urgent letter from XXXXXXXXXXXXXXXXXXXXXXXX indicating that my son's financial aid package was being held up because they were waiting for information that they had requested but not received. Apparently they used my AOL email address, which I had listed on the Free Application for Federal Student Aid (FAFSA), in January of 2006, to contact me. Of course I never received this email because AOL had shut down the account. I immediately rushed them the requested information but when we received my son's financial aid package it did not include the American Competitiveness Grant, which he had received first semester. These funds are awarded on a first-come, first-served basis to eligible students, and the likelihood is that my son lost this funding as result of our failure to reply to an email which, thanks to AOL, we never received.

Of even greater concern, however, is the impact that AOL's actions have had on my livelihood. I now know of two instances in which former colleagues or clients gave my email address to potential new clients to contact me about job proposals. One of these was a potentially long-term collaboration that could have proved extremely lucrative for me. Since weeks went by before I even learned of this prospective account, the opportunity was lost. What concerns me even more is that these are two cases where I happened to learn that people had attempted to contact me about jobs. There is no way of determining how many other jobs I may have lost as a result of fruitless attempts to contact me through a defunct email address.

Perhaps the most disturbing aspect of this whole situation is that I had contacted AOL just last spring to change the terms of my account. At that time, I told customer service that although I still needed my long-established AOL email address, I now had DSL and therefore did not need AOL to provide internet access. My monthly bill was, accordingly, reduced at that time from \$14.95 per month to \$9.95. I bring this up as relevant because during this conversation the issue of my son's supposed "ownership" of the account was not broached by AOL, and it apparently posed no impediment to AOL's continuing to

collect the monthly fee from me that it had been collecting for many years. Strangely--or perhaps not so strangely--it was only in December when I attempted to stop paying for *the account altogether that my son's name on the account suddenly became so* problematical that the account needed to be terminated immediately—regardless of the negative impact on me and my children.

Although it is difficult to fathom exactly what motivated AOL to take the action it did, it appears that, in seeking to protect itself against some possible future economic sanction, perhaps in the form of a fine, AOL chose instead to inflict immediate economic damage on me. However, whereas AOL is a huge corporate entity, I am a single parent of relatively modest means endeavoring to put three kids through college. I daresay that AOL is in a far better position than I am to take the financial hit.

I do not know if what AOL did to me was illegal but it certainly was not nice, and it assuredly was not the way to treat a customer of long standing. The damage done to me and my family has been considerable, and I am not prepared simply to let this matter drop. Although I prefer that it not escalate into litigation I will go that route if necessary. However, in return for dropping all claims and for agreeing not to file a complaint with any regulatory or consumer agency or to pursue any legal action against AOL, I am willing at this time to accept a settlement of \$75,000.

I would appreciate your forwarding this letter to the appropriate AOL division for consideration of my offer. I can be reached at (202) 686-1375 or (202) XXX-XXXX as well as at the above address. I thank you in advance for your prompt response.

Sincerely,

Gail M. Mortenson

All of the "solutions" to my situation suggested in the AOL/Time Warner response to my petition are workable only in the context of a situation where the consumer knows ahead of time that an account is going to be closed, and can therefore act proactively before that happens. As the foregoing letter to Ms Partoll evidences, this is not what happened in my case.

Moreover, in their rebuttal to my petition the Time Warner lawyers claim that in my "prior communications with AOL", I stated that "the subscription fees were charged to my account without proper authorization." This is an outright lie, and it is diametrically opposed to what really happened: After shutting my account down, AOL did indeed send me an "unauthorized charge affidavit", and they requested that I sign and return it to them. However, not only did I not do so, but after reading the document, I called them and asked if they were attempting to get me to commit perjury since what they were asking me to swear to was blatantly untrue, as AOL well knew.

The fact that there are many things that I *might* have done to protect myself from the disastrous consequences of AOL suddenly locking me out of my e-mail account is irrelevant. Given that I didn't know the shutdown was going to occur, I had no reason to believe such protective measures were necessary. And I am sure that there are millions of other consumers out there who don't realize that the e-mail files they have accumulated over years—and in fact their entire online identities—can vanish in an instant should their e-mail service provider choose to terminate them, for any reason whatsoever. I would venture to guess that most consumers have not the slightest idea that they essentially have no rights with regard to their e-mail accounts; nor would they . imagine that any company would treat their online identity as cavalierly as AOL treated mine.

Indeed as e-mail has moved from a paid subscription model to a free service, the consumer is more at risk than ever before. It is hardly coincidental that over the many years AOL billed my credit card for my e-mail account, I was never asked why my name differed from the name they had listed on the account. (Remember AOL was the only party who knew my son's name was on the account. I didn't know it, nor did my son.) There were several occasions over the years when I called to change the terms of service, and never was I questioned as to whether I was the account owner. Never, that is, until the night I called and attempted to stop paying for the service. That night was the first time that AOL ever mentioned that my son was listed as the account owner: As long as I

was paying them, AOL was indifferent as to whose name was on the account. Once I attempted to stop paying for the service, the name on the account suddenly assumed paramount importance—it became so significant that AOL felt compelled to shut down my account immediately. This is hypocrisy of the highest order, as well as total indifference toward the consumer.

I fear that with the new paradigm of “free” e-mail the consumer is at even more of a disadvantage should something go awry between account user and account provider. Now that there is no direct financial nexus connecting e-mail service providers and those who use their services (i.e., there is no subscription fee), there is less incentive for service providers to be responsive to and protective of the individual consumer. While it is wonderful that there are so many e-mail choices out there for consumers to avail themselves of, this does not, as Time Warner/AOL seems to suggest in its rebuttal, protect the consumer from the type of event that befell me at AOL’s hands. That I could immediately set up a new e-mail account elsewhere was of small consolation to me given that all of my AOL e-mail folders—some containing things that were irreplaceable and of great personal value—were lost forever.

It is obvious that the current system is lopsided and inherently unjust. The companies that provide e-mail services are not doing so out of the goodness of their benevolent corporate hearts. They are doing so because in return for providing “free” e-mail to consumers they reap enormous profits from the advertising dollars that flow into their coffers as the result of consumers using their sites. Yet while these companies fatten themselves on the advertising revenue that they receive as the direct result of the public using their services, they have no accountability whatsoever to this same public. Is that fair? Should we really have to give up all our rights because the providers are offering the service for free?

### **CONCLUSION**

After my account was shut down by AOL, I told my story far and wide among my friends, family, colleagues, and acquaintances, and the universal, visceral reaction was “They can’t do that!” I am proof that they not only can but that they do. Given that I live



and work in the nation's capital, a number of those to whom I related my experience (and *who were outraged by AOL's actions*) *were attorneys*. *It was one of these attorneys who* suggested that I file a petition with the FCC. Although my original intent had been to file a civil suit against AOL, I ultimately had to accept that I simply did not have the financial resources to do so, and I therefore decided to take this person's suggestion. Had the FCC not accepted my petition for filing, my experience with AOL/Time Warner would have gone largely unnoticed and undocumented, which I am sure is what AOL/Time Warner counts on. I am indebted to the Commission for accepting my petition for filing, thereby allowing me to bring the issue of abrupt termination of e-mail accounts to the attention of a broader audience.

The fact that Time Warner's rebuttal to my petition was crafted by in-house lawyers and outside counsel who apparently had no knowledge of or access to the letters I had written to AOL is very telling. All of my letters and calls were channeled to one person in customer service, who described himself as being with the "corporate offices". (This resulted in one absurd conversation where this individual called me to discuss a letter that had been forwarded to him from Time Warner in New York—not realizing that he had already discussed the same letter with me a couple of weeks earlier. It had simply taken longer for a copy to be forwarded to him from Time Warner than it had from AOL.) This almost fortress-like impenetrability surrounding AOL/Time Warner and my inability to breach customer service and gain access to someone who would address seriously the issues raised in my letters was the motivating force that drove me to file my petition.

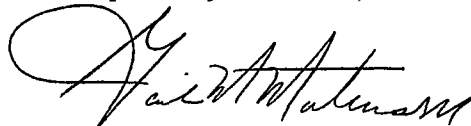
Time Warner's assertion in its rebuttal to my petition that it "consistently has supported the goal of ensuring consumer protection in the broadband world" is laughable. As a result of my disillusioning experience with AOL, I have come to the sad conclusion that the individual consumer, no matter how proactive, is simply no match for the resources that a huge corporate entity can muster.

Despite the considerable lengths I went to to be heard, I was unsuccessful in gaining AOL's attention until I filed my petition with the FCC. I am certain that the situation I

found myself in is one that has been played out many times over. However, I think that the individual consumer too often feels powerless in the face of a major corporation like *AOL/Time Warner, and has neither the time nor the resources to attempt to redress the* wrong that has been done them. What's more, it is difficult for consumers to locate others who may have confronted a similar problem. With these thoughts in mind, I decided to try to effect a systemic change, and hence I filed my petition. If AOL and other e-mail service providers are unwilling to take their very real and very serious responsibilities toward consumers seriously, then perhaps it is time for the FCC to consider regulating them so they are forced to do so.

Whether or not the specific ideas put forth in my petition are workable and worthy of consideration is up to the Commission to decide. Whatever the outcome, however, I am grateful to the Commission for accepting my petition for filing. At the very least this has opened up a collective conversation about the rights (or lack thereof) of consumers with regard to their e-mail accounts, and at best it will result in regulation or legislation that will prevent what happened to me and my family from happening to other consumers.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gail M. Mortenson", with a large, stylized initial "G" at the beginning.

Gail M. Mortenson

4300 Lowell St., NW

Washington, DC 20016

November 20, 2007